**IN THE HIGH COURT OF JUDICATURE**
**AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 240 OF 2000**

Rajesh Suryakant Dhaka ...Appellant
Age 21 years, Residing at (Org. Accused No.2)
Flat No.30, 3rd floor, 'C' Building,
Damodar Bhavan, Station Road,
Vile Parle (West), Mumbai-400 056.
At present imprisoned at District Prison,
Yerwada, Pune.

Vs.

1. The State of Maharashtra
   At the instance of Juhu Police Station,
   C.R.No.277 of 1992)

2. Bhishma @ Akki S/o. Niranjan Shah
   201-202, Vandana Apartments, Juhu,
   Bombay. ...Respondents

Mr.Mundargi for the Appellant in Cr. Appeal No.240 of 2000
Mrs. Kejriwal, A.P.P for the State.

**AND**

**CRIMINAL APPEAL NO.241 OF 2000**

Manish Suryakant Dhaka ...Appellant
Age 26 years, Residing at (Org. Accused No.1)
Flat No.30, 3rd floor, 'C' Building,
Damodar Bhavan, Station Road,
Vile Parle (West), Mumbai-400 056.
At present imprisoned at District Prison,

Yerwada, Pune.

Vs.

1. The State of Maharashtra
   At the instance of Juhu Police Station,
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   201-202, Vandana Apartments, Juhu,
   Bombay. ...Respondents

Accused in person (at his request) in Cr. Appeal No.241 of 2000

Mrs. Kejriwal, A.P.P for the State.

**CORAM: SHRI J.N.PATEL &**
**SMT. ROSHAN DALVI, JJ.**
**DATED: 28TH AUGUST, 2006**

**JUDGMENT (PER SMT. ROSHAN DALVI, J.)**

1. The accused, in the above appeals, are brothers. They have been charged, convicted and sentenced for having committed various distinct offences in conspiracy with one another and with common intention over a period of time.

2. They are charged with having secured a flat in a posh locality in Bombay between 4th May, 1992 and 10th August, 1992, by preparing forged documents and using them as genuine, to induce the owner of the flat to deliver possession of the flat to them and having cheated another owner to

obtain possession of another flat at another place.

3. They are also charged with having kidnapped and abducted the victim child Vatsal Niranjan Shah @ Kukky aged about 8 years and having wrongfully confined and murdered the said victim child and having caused disappearance of evidence.

4. They are further charged with having committed extortion on separate and distinct dates being 13.7.1992, 25.7.1992, 30.7.1992, 1.8.1992, 2.8.1992, 3.8.1992, 4.8.1992, 7.8.1992, 9.8.1992 and 10.8.1992 by demanding ransom from the relatives of the victim child after intimidating them and attempting to put them in fear of death of the victim child.

The prosecution case is in several parts :

(a) The accused, obtained a flat being Flat No.702 in Vandana Apartments at Juhu, Bombay, the building in which the victim child lived along with his relatives, on the 2nd floor and having 2 more vacant flats on the 3rd floor. To secure the said flat the accused contacted certain Estate Agents and brokers who purportedly contacted the owner of

the flat who demanded their identification and photograph, required them to execute certain agreement and affidavit and get the same notarised and for which purpose the accused got printed certain letter-heads and visiting cards showing that they were Hoteliers conducting the hotel business in Gujarat under assumed names of Bharat and Ram Sahy.

(b) After having secured the said flat, the accused on 13th July, 1992 kidnapped/abducted the victim child Vatsal @ Kukky when he returned from his school. After confining the said child in their flat No.702 they made telephone calls to the grand-mother of the child and instructed her to see a parcel (which contained a stencilled ransom note, photographs of the child and his school articles) which they left near their 3rd floor flats after which they absconded with the child.

( c ) Thereafter they made various phone-calls from time to time threatening the relatives of the child with dire consequences for the child and giving detailed instructions of how much and how the ransom has to be paid to them by another stencilled ransom note.

(d) In the mean time the accused murdered the said child by smothering the child and administering an overdose of chloroform and caused disappearance of the dead-body of the child by taking another flat in Mathadi Workers Colony in Kandivali (East) on leave and license basis in another assumed name of Rajesh/Rakesh Shah and burying the child below the kitchen platform (Otla) after purchasing various building materials and other allied articles for that purpose.

(e) Upon having traced the telephone calls made by the accused to the relatives of the victim child, the accused came to be arrested near the Kandivli telephone exchange outside one telephone booth on 10th August, 1992 and after which a search and seizure panchanama was prepared which yielded recovery of various incriminating articles.

(f) Thereafter at the instance of the accused the dead-body of the child as well as various other incriminating documents came to be recovered from the flat at Kandivli. The dead body of the child was sent for Post Mortem as well as superimposition test

of his skull for his perfect identification.

(g) At the instance of the accused the prosecution recovered further documents showing that the accused were residents of Dubai, who had come to India only recently and lived in various hotels in Gujarat and Mumbai after their arrival in India.

(h) It is upon collecting the evidence showing the exercise undertaken by the accused to obtain the flat in the building where the victim child lived, another flat licensed in a Mathadi Workers Colony and from the recovery of articles connecting the ransom note and the other documents of the accused, that the prosecution obtained the specimen handwriting of both the accused and sent various documents to the Handwriting Expert for comparison and for obtaining his opinion thereon.

5. The fact that the accused lived in Dubai for many years since their childhood for many years and until a couple of months prior to the incident is admitted. A number of documents recovered from the accused including their Passports Exhibit- 79 and 80 bare out that fact. The fact that they came to India only in May, 1992 is also admitted.

The accused have given their justification for their departure from Dubai and arrival in Mumbai after many years. They have stated that because their father gave financial assistance to their cousin, which their mother disapproved of, there were several quarrels between their parents which prompted them to break away, so they left their home to take a holiday in India. They arrived in Mumbai on 3rd May, 1992. They went for pilgrimage to various places in Rajasthan via Ahmedabad and Abu. The prosecution has collected documents of some of the hotels in which they lived, at certain places in Gujarat and Rajasthan in May, 1992.

6. The accused had their family residence at C-30 Damodar Bhawan, Near Vile Parle Railway Station, Mumbai . A neighbor and a family friend examined by the prosecution saw the accused in the said flat. His evidence has not been challenged by the accused. The evidence of the family friend shows that because the accused were not traceable by his father in Dubai, his father had requested the said family friend to ascertain whether the accused were in Mumbai. The family friend had visited the family flat of the accused, enquired of the accused, and the accused had told him that they would contact their father.

7. It is therefore clear upon the admission of the accused that their parents were not informed about the holiday that both the accused desired to take in India.

8. It is upon such admitted position that the acts of the accused alleged by the prosecution would be required to be seen upon the evidence produced by the prosecution.

9. The case of the accused is largely of denial simiplicitor aside from the above position.

10. It is for the prosecution to show if and how the accused came to acquire a flat in the same building where the victim child lived. To further see any illegal acts committed by the accused, the prosecution has sought to show the procuration of the flat in Vandana Apartments, the building where the victim child lived through the evidence of as many as 14 witnesses.

11. The P.W.No.1 and 2 are the brokers and Estate Agents, who introduced the accused no.1 with the owner of the flat. P.W.27, the owner of the flat No.702 in Vandana Apartments, Juhu, Mumbai, insisted upon accused no.1 furnishing his identification since he was unimpressed by the financial capability of the accused to license his flat. He

was shown certain letters on certain letter-heads showing the accused as hoteliers from Gujarat named Ram & Bharat Sahy. The letter-heads were printed by P.W.36 and P.W.9 and on one of which P.W.8 typed the contents.

12. The owner of the flat P.W.27, not being satisfied with the credentials of the accused no.1, who had contacted the owner through the brokers, required him to make a notarised affidavit containing his photograph on a stamp paper aside from executing an agreement and insisting upon a guarantee letter to be given by a Broker. The accused no.1 therefore, got himself photographed at the studio of P.W.39, the photographer. Upon preparation of his affidavit containing his photograph accused no.1 was to contact P.W. 4 the Commercial Manager of the owner P.W.27. He executed the affidavit as required by the owner in the assumed name of Ram Sahy which was given to and produced by P.W.4 in evidence as Exhibit-17. Accused no.1 was identified by an Advocate P.W.14, who drafted the affidavit on his instructions and got it notorised from P.W.6 to whom accused no.1 was introduced by the said Advocate and before whom the accused No.1 signed as Ram Sahy.

13. The accused no.1 was required to pay Rs.3,00,000 as the deposit for the said flat to be taken on leave and license

upon the execution of the leave and license agreement and to pay a license fee of Rs.35,000/- per month. The owner P.W.27 whom accused no.1 met, introduced by P.W.1 and 2, refused to accept cash and insisted on being given the deposit amount by Demand Draft.

14. The accused no.1 obtained the demand draft from Tamilnad Mercantile Co-operative Bank Ltd to whose Manager P.W.38, he was introduced by one Dharmendra Karia P.W.29. He obtained 7 demand drafts in various names for payment of the deposit amount to the owner of the flat, which were produced by the Manager of the issuing Bank P.W.-38 as Exhibit 68 colly.

15. Upon having undertaken the exercise demanded by the owner of flat No.702 in Vandana Apartments, the owner executed the Leave and License Agreement Exhibit 15 with Accused No.1 as Ram Sahy. Both the accused secured possession of the said flat and started to occupy the flat. They were seen by the lift-man of the building P.W.3 whilst they were coming from and going to the flat. They were also seen by P.W.26, the maid of the adjoining flat No.701 since on a given day she had lost the keys of the flat where she served as maid and hence enquired in the adjoining flat No.702 whether they had seen the same. It was then that

she saw the accused in flat No.702.

16. It can therefore, be seen that the evidence of the aforesaid witnesses would show the initial aspect of the prosecution case in which the accused are stated to have set the stage for the kidnap and murder of the victim boy which was to follow.

17. It must be remembered that this was in 1992 at the height of the Securities Scam in which interalia one Harshad Mehta was involved. The family of the victim boy is stated to be known to or distantly related with the said broker concerned in the said scam. Their house was raided by the Tax Authorities at around the same time. The accused are businessmen, well settled and admittedly hailing from a prosperous family in Dubai, his father having migrated there as a businessman and the accused having been born there. The accused would know the current financial news in India and can be imputed such knowledge. It is in this scenario that, as per the prosecution case, the accused together came to Mumbai and after their initial pilgrimage/holidays in Rajasthan and Gujarat set about to laying a foundation for the illegal acts to follow.

**License of Flat No.702 in Vandana Apartments,**

**Juhu, Mumbai.**

18. The evidence of P.W.1 and 2 shows that accused no.1 who represented himself as Ram Sahy was introduced to the owner of the flat 702. They have shown various meetings held for the transaction to go through including one to take him to a photographer. They have identified accused no.1 as Ram Sahy in Court. P.W.1 produced a letter dated 25th June, 1992 from Ram Sahy to one Jayant Pardhanani Exhibit 14 in which accused no.1, who signed as Ram Sahy on is stated to have mentioned that he had paid all the amounts to the owner of the flat and had taken possession for 11 months and indemnified Jayant Pardhanani against any damage thereto and assured that he would not carry out any illegal activities in the said flat while he stayed there during the period of license.

19. The evidence of P.W.4, the Commercial Manager of the owner shows how he got executed the requirements of his master for licensing the said flat to the accused no.1. It further shows the inspection that accused no.1 took of the flat to agree to the various terms and conditions required by the owner. He was sent with P.W.2 to the photographer as insisted upon by the owner.

20. The deposition of P.W.2 shows the visit to the photographer along with accused no.1. He was also told to notarise the affidavit to be prepared bearing the said photograph. The evidence of P.W.2 also shows how he had accompanied the accused with the said Jayant Pardhanani to Bandra Court for making the affidavit through the Advocate P.W.14 and then having it notarised through the Notory P.W.6 on 25th June, 1992.

21. The evidence of P.W.2 and 4 is corroborated by P.W.14, the Advocate and P.W.6, the Notary who have detailed how instructions were given for the preparation of the affidavit by accused no.1 and how he was introduced to the Notary by P.W.14. The evidence of P.W.4 shows how after preparation of the documents to the satisfaction of the owner the consideration was paid by the accused no.1 to the owner, again following the specific mandate from the owner.

22. The evidence of P.W.39, the photographer shows that one regular customer by name Pawan (P.W.1) had brought 3 other persons to him in June, 1992 one of whom was accused no.1, to whom he had delivered a polaroid instant photograph. His deposition shows that he had been shown the said photograph later by the police. He identified the accused in Court as the same person albeit one wearing

spectacles as appeared in the photograph whilst he was brought to his shop by his regular customer Pawan (P.W.1).

23. The evidence of P.W.29 shows how at the instance of the said Jayant Pardhanani, who had brought interalia accused no.1 to him, he introduced the accused no.1 to the Manager of The Tamilnad Mercantile Bank Limited with whom his company had banking transactions, and hence, was known to the Manager. His evidence shows how he was introduced to the accused no.1 whom he introduced to the Bank Manager to obtain the Bank drafts for the payment of the deposit amount to the owner of the flat No.702. He not only identified the accused no.1 but described him as he was at the time of the transaction, complete with the spectacles.

24. The evidence of P.W.38, the Manager of the Bank of Tamilnad Mercantile Co-op. Bank Ltd shows how 7 demand drafts were issued in various names. He produced Exhibit 68 being the original demand drafts from the records of the bank along with the applications for the issuance of the demand drafts made in different names on the same day. These demand drafts have also been sent to the Handwriting Expert for his opinion and comparison of the handwriting with the specimen handwriting of the accused no.1.

25. The evidence of P.W.9, the printer owning Bharat Printing Press at Malad (E) shows that his accused No.1 got printed visiting cards and letter-heads in his press in English and Gujarati languages. The letter Exhibit-22 has been identified by that witness as having been printed by him. P.W.8 the Typist has typed the contents of the letter-heads which came to be signed by one Bharat Sahy, whom accused no.2 represented to be. The letter-head shows a restaurant in Gujarat run in the name of ***"Sahy's"*** . It is signed by Bharat Sahy stating that he and his brother Ram Sahy desire to rent the flat of the addressee in Vandana Apartments.

26. Certain further blank letter-heads of the same print Exhibit-64 colly having been recovered by the police, have been identified by P.W.9 as having been printed by him.

27. P.W.27, the owner of flat No.702 has identified the said letter and deposed about how the credentials of the accused were sought to be shown to him, to which he remained dissatisfied for letting out his flat. He, therefore, insisted upon a stamped, notorised affidavit with the photograph of the proposed Licensee, and the deposit amount by demand drafts or cheques aside from the execution of the Leave and License Agreement and the Guarantee Letter of the broker.

28. The evidence of P.W.26 the maid servant and P.W.3 the liftman show how the two accused upon obtaining the flat started occupying it. The evidence of the P.W.3 shows that they were two persons residing in flat no.702 who were coming and going by lift. He did not see those persons after the news of the missing of the child was made known. He could remember them by face and had seen them only coming and going in the lift through the gate of the building. His evidence further shows his knowledge that flat no.701 was closed as the resident had gone somewhere. His evidence, therefore, shows his knowledge of the occupants of the building. The accused nos.1 and 2 have been shown to be occupants from 25th June, 1992 when they licensed the flat until 13th July, 1992 when the victim boy was kidnapped and the accused left the flat.

29. Such oral and documentary evidence together shows the role played by the two brothers in perpetuating the first of their fabrications. It was the first step towards the offences they were due to commit in the forthcoming days.

30. The exercise of the accused in impersonating themselves and fabricating documents is evident from the documents Exhibits 14,15, 17 and 22 prepared right from the pre-incident period.

31. The evidence of each of the aforesaid witnesses is corroborating one another. It is so inextricably interlinked with one another as to appear repeatedly with regard to the material facts relating to the transaction that took place over a period of days for licensing the said flat by the accused.

32. Each of these witnesses have attended and identified the accused at a Test Identification Parade (TIP) held during the investigation. However, the identification is fraught with certain errors and anomalies. It is, therefore, prudent to disregard the entire Test Identification Parade all together.

33. Each of these witnesses have identified the accused in Court and the evidence of each of them is credible enough to require acceptance of their identification of the accused for the first time in Court.

34. The documents Exhibits 14,15,17, 22, 64 and 68, have all been sent to the handwriting expert P.W.51 for comparison with the admitted handwriting of the accused and opined to be written by accused no.1. The blank letter heads are opined to be of the same material as the letter Exhibit-22. The applications for Demand Drafts are not opined to be in the handwriting of any of the accused.

35. The case of the accused with regard to this entire evidence is one of denial. They deny impersonating in the name of Ram Sahy and Bharat Sahy, or showing that they were in hotel business in Gujarat or of meeting any of these witnesses for licensing a flat No.702 in Vandana Apartment. The accused claim that they have their own flat No.30 in Damodar Bhavan near Vile Parle Railway station and hence had no need to license any other flat. Consequently the entire cross examination of these witnesses and the case put to them centers around only showing minor and irrelevant omissions and contradictions and the case of denial simplicitor.

36. From the untiring efforts of the prosecution to examine a number of witnesses, most of whom, are relevant witnesses, to bring home the varied acts of the accused, the climax of this case is reached in the perseverance of the trial court in examining three witnesses as Court witnesses which give a complete lie to the case of denial of the accused. This relates to licensing of the flat in 702, Vandana Apartments from the owner PW 27.

37. CW1 is the Advocate who acted on the instructions of the mother of the accused D.W.1, after the date of the

incident to send a notice by registered post A.D to PW 27, marked Exhibit A. The notice Exhibit A refers to her sons Rajesh and Manish accused nos. 2 and 1 respectively, giving a deposit of Rs.3,00,000/- in June 1992 for the flat owned by the addressee of the notice. It mentions that the client of the advocate under whose instructions the notice is sent, Mrs K.S.Dhaka (the mother of the accused), requested the addressee to return the amount of Rs.3 lakhs after deducting the compensation for the month of June 1992 upon her return to Mumbai in June 1992 (and not in August 1992 as is the case of the accused). It alleges that the addressee was withholding the same without any valid reason and called upon him to return the amount immediately.

38. CW 2 is the Advocate who represented both the accused in the Metropolitan Magistrate Court at Andheri under their Vakalatnama for return of the deposit amount upon settlement between the parties to remove the lock and to hand over possession of the flat to its owner. This evidence shows that the owner wanted return of his flat upon removal of the lock put by the police thereon and the accused demanded return of the amount of deposit paid by them less the amount payable by way of monthly compensation and other expenses. His evidence further shows that the accused received a sum of Rs.1,00,000/-

from the owner PW 27 for flat no. 702 in Vandana Apartments.

39. Exhibit B is a xerox copy of the receipt dated 6th November 1992 in favour of ”Ram Sahy (Manish) “ (the assumed name and real name of accused no.1 who was then in the custody of Juhu police station who was the respondent in that application). It shows receipt of cheque no.124984 dated 6th November, 1992 for Rs.1,00,000/- in full and final settlement for flat no. 702 on the 7th floor at Vandana Apts. The receipt is signed by “Ram Sahy (Manish)”.

40. Exhibit-C shows application of PW 27. It inter alia states that he owned the said flat No.702 and that one Ram Sahy (Manish) entered into a Leave and License Agreement with him on 26th June 1992 when he agreed to give his well furnished flat for 11 months on leave and license basis to him. Subsequently, he learnt that the said Ram Sahy and his brother were arrested for kidnapping a minor child Vatsal and Juhu police had sealed his premises. The agreement was terminated by due legal notice and the balance amount of deposit was forfeited. He prayed that the seal be removed and possession be restored to him. The papers Exhibit C also contain the say of the police relating to

the flat followed by the statement of accused No.1 as Ram Sahy Manish stating that out of the deposit amount, Rs.1,00,000/- was received by him in full and final settlement with regard to the flat on the 7th floor at Vandana Apartments, and that he has no objection if the flat is handed over to the applicant. There is a further statement signed by both the accused in their real names stating that the said flat was hired on leave and license after payment of deposit of Rs.3,00,000/- on monthly compensation of Rs.35,000/- which came to Rs.75,000/- plus Rs.25,000/- as damages payable to the applicant (owner of the flat, PW 27). On receiving the balance amount through Advocate Mr Shaikh, they had no objection to hand over the said flat to the applicant.

41. The record and proceedings further contain the order passed on 17th November, 1992 stating how the applicant (owner PW 27) had given his flat to the accused for which the accused received a cheque of Rs.1,00,000/- to settle his claim and had no objection to hand over to the applicant/owner the flat. Hence, the court directed the police to remove the seal from the said flat and hand it over to the applicant/owner.

42. In fact no other person is shown to have licensed that flat. No other family is shown to have resided therein.

43. This evidence collected with the efforts of the trial Judge leaves no doubt that the accused alone licensed flat no.702 in Vandana Apartments so that the prosecution evidence relating to the procuration of the flat, complete with photograph and notarisation of the documents insisted upon by the owner, comes to be proved beyond doubt. The rest follows as a matter of corollary.

44. It is material to note that during this time, more specially towards the end of June, 1992 or on 25th June, 1992, the date of the transaction brought out by the prosecution, the accused have not explained precisely where they were during their holiday, though they have sought to explain in their statement recorded under Section 313 of the Cr.P.C. and by filing a written statement submitted by the accused no.1 that they had gone to Gujarat during that period and returned only on 15th July, 1992 when the accused no.1 was arrested at Vile Parle Railway Station and the accused no.2 was arrested a day thereafter at their residence.

45. In view of this case it would now be material to see how they spent atleast a part of their holiday in Gujarat.

## Hotel stay in Gujrat and Rajasthan

46. The prosecution has produced interalia a register of Hotel Deluxe at Swaminarayan Mandir Road, Ahmedabad-380001 showing an entry in the name of Manish Dhaka accused no.1 reflecting the stay of both the accused in that hotel on 13th May, 1992. Serial No.455 is the entry relating to the check-in of the accused in that hotel. That entry is in the real name of accused no.1 showing his permanent address at Ghatkopar, Bombay. It shows the stay of 2 persons in Room No.9 from 13th May, 1992 to 14th May, 1992. It is stated to be initialed by the accused no.1. This is one of the documents sent by the prosecution, amongst others, to the handwriting expert for his opinion and comparison with the specimen handwriting of the accused no.1. His opinion shows the entry is in the handwriting of accused no.1. It may be mentioned that this is the only entry in hotel register in the real name of the accused no.1 himself.

47. The prosecution has got produced other hotel registers through other witnesses which have also been sent to the handwriting expert showing the impersonated and assumed names stated to be of the accused. Those entries are in

various other names invariably showing 2 persons who have checked-into other guest houses/hotels during the period prior to and after the incident.

48. The next of such entries is in a guest house register of one Kalpana Guest House at Sharad Trading Corporation, below the bridge, Gandhi Road, Ahmedabad. The register shows 3 entries Nos.616, 631 and 697. The entry no.616 is in the name of Laxman Verma dated 5th June, 1992 showing 2 persons check-in room no.4 from Bombay and having their permanent address at Ghatkopar, Bombay. The entry no.631 dated 6th June, 1992 shows one Jayant Shah checking-in to room no.103. The entry shows 2 persons having permanent address at Ghatkopar, Bombay. The other entry No.697 dated 15th June, 1992 is also in the name of Jayant Shah checking-into room no.104. This entry shows only one person checked-in the guest house showing permanent address at Ghatkopar, Bombay. These three entries marked B-1, B-2 and B-3 have been seen and compared by the handwriting expert. His opinion Exhibit-139 shows entry No.D-1, which shows the name of Laxman Verma in the handwriting of accused no.1 and the entry nos.D-2 and D-3 which are in the name of Jayant Shah, in the handwriting of accused no.2.

49. It may be mentioned that these are the only pre-incident entries. The very first being in the real name of the accused no.1 himself, and after which all the entries are made in the assumed names. 2 other entries in 2 other guest houses are made when the accused are stated to have lived in various places in Mumbai after the incident when they were not available in the flat at Vandana Apartments and before their arrest.

50. Upon the prosecution case that the accused got prepared and fabricated documents for obtaining the flat at Vandana Apartments, as has been seen hereinabove, it would be material to consider those documents containing their signatures alongside the aforesaid 2 registers showing the handwriting of both the accused.

**Act of Kidnapping**

51. After returning from the pilgrimage, as per the prosecution case, the accused got down to the business of acquiring the flat in Vandana Apartments to be able to be close to the victim child, who lived in the same building and who came to be kidnapped and later murdered.

52. Having made the aforesaid preparation and having

secured the said flat, the accused kidnapped the victim child on 13th July, 1992 as he alighted from his school bus upon his return home at 2.30 p.m. The child never reached his home. His grandmother, who lived in the same flat, never saw him return home that afternoon. She instead received certain telephone calls. She was directed in one such telephone call to check near the entrance of their 3rd floor flat for the whereabouts of her grandchild. She told the watchman to go to the 3rd floor to collect the material awaiting her. She received a stenciled note/chit, a school bag, a water bottle and 3 photographs of her grandson showing his mouth, hands and legs tied with pieces of cloth. She got the note read as it was in English, which she could not read. She understood from the note that the child has been kidnapped. She inquired of her neighbour P.W. 10 and learnt that the child of her neighbour as well as her own grandchild came in the same school bus and alighted together. The victim child was therefore, last seen by his friend's mother, one of his neighours, P.W.10 entering the building.

53. The deposition of the grandmother P.W.19 shows the contents of the stencilled chit signed by one Bhatia, which was a ransom note making a demand of 15 crores worth of diamonds and 5 Kg of gold. She phoned her 2 daughters

P.W.21 and P.W.23 and lodged her complaint. Thereafter, several telephone calls were received making demands for ransom, giving detailed instructions for the payment of ransom and threatening them with dire consequences to the child. The evidence of P.W.21, 23 and 25, the 2 daughters and the son-in-law of P.W.19, the grandmother of the victim child, shows how they were to execute the ransom demand. Several telephone calls yielded nothing. P.W. 23 and 25 were directed to check in one Aradhana Hotel at V.P. Road, Bombay 400 005, in the name of Mr. & Mrs. Dutt which they did. The last of such telephone calls received on 9th August, 1992 led them to seat No.26 and 27 in compartment S-6 of Kutch Express at Bombay Central Railway station below which was a bag containing interalia a walkie-talkie and written instructions of how to throw the ransom demanded in kind from the moving train. The evidence of P.W.25 shows the contents of the detailed stencil note with the diagram for the execution of the ransom demand.

**Arrest of the accused**

54. The telephone calls were traced to Kandivali telephone exchange. The police kept a watch at the telephone exchange and arrested both the accused on the next day, i.e on 10th August, 1992 from a telephone booth outside the

Exchange Building. The search and arrest panchanama Exhibit-71, yielded interalia one page of a diary of July/August, 1981 Exhibit-125, one page of a blank diary Exhibit-124, 2 railway ticket reservation requisition slips (exhibit-123), a book of diamond identification (Exhibit-126), a note book titled "Shivam" containing a note about diamonds (Exhibit-127), a torn page of a railway time- table Exhibit-145, 2 railway tickets containing 2 consecutive numbers 18750 and 18751 from Malad to Churchgate and 2 railway passes containing 2 consecutive numbers 070848 and 070849, exhibits 147 to 151.

**Seizure of Documents**

55. A voluminous mass of documents is seized by the prosecution. Documents do indeed speak more eloquently than witnesses themselves. These documents would be enough to show the ultimate link with the accused. Hence, in a case having such plethora of documents, the documents alone need be considered. It is imperative to consider the essence of these documents bearing in mind the modus-operandi of the accused moving and living together.

56. The accused admittedly came from Dubai leaving behind their parents who were quarreling and with whom

they disliked residing. The accused left Dubai together and came to Bombay together. They went for a pilgrimage holiday to Gujarat and Rajasthan. They lived in hotels together. The initial entry in hotel Deluxe was in the correct name of the accused no.1 in May, 1992 when they were not well ingrained in the business of crime. Towards the later period of the same holiday they assumed different names whilst checking-into later hotels. Though the entry in the hotels showed them in business/textile business, and their permanent residence in Bombay, the main characteristic of their operation, as reflected in those entries, showed an intent to fabricate their whereabouts, business as also their names. Nevertheless they moved in a pair.

57. It must be remembered that after coming to Bombay the acquisition of the room by printing letter-heads to show that they were hoteliers was also done by them together. Hence, came into being Ram and Bharat Sahy and the restaurant that they purportedly conducted - “Sahy's”. Consequently though the Leave and License agreement exhibit-15 and the affidavit exhibit-17 were shown as signed by Ram Sahy, the letter exhibit-22 was shown as signed by Bharat Sahy. Indeed both the documents show the handwriting of one man whom the handwriting Expert has opined to be of accused no.1.

58. The accused no.2 had a different potential and talent. He is shown to be well versed in the science of gemology. He apparently knew more about diamonds than his brother, accused no.1. The ransom note, which will be considered in detail, presently, specifically had the undertones of not demanding cash as is done in other cases. The article of choice was diamonds and gold. That would be easier to contain, carry, keep and conceal. The note shows not only the worth of the diamonds and gold but precisely what kind it would be and how it had to be handled- with care- fragile though it was not. The mode of not only obtaining and packing but throwing the packet containing the diamonds shows the meticulous precision with which a mind of a diamond gemologist would work. This has to be appreciated alongside the diamond booklet which came to be recovered in the search panchanama upon the arrest of the accused. The booklet exhibit- 126 is for diamond identification written by Ashok Madan Mohan. It shows the metaphor - “Diamonds are Dollars”. The identification book deals with separate chapters relating to the cut, grading, colour, quality, carat, grading by diamonds and its stimulants. The second page of the book of “Diamond Identification Exhibit- 126 shows the facets of a brilliant cut”. It shows diagramatical illustrations of various facets. Certain

handwritten material on page 2 of the booklet which deals with certain technical names of the diamonds of particular shapes is questioned document 18 sent to the handwriting expert for his opinion and comparison with the specimen handwriting of the accused. The opinion of the handwriting expert shows that the handwriting contained therein is of accused no.2, the brain behind the diamond demand.

59. The Shivam note book exhibit-127 contains 2 pages of handwritten material in an otherwise blank notebook. These pages relate to the technical aspects of interalia the colour, transparency, cut, phenomena and luster which apparently relate to gems. The said page marked questioned document no.20 has been opined by the handwriting expert upon examination and comparison to be in the handwriting of accused no.2. The accused have raised a meaningless contention that page 1 of the book has been malafide removed. The Document reveals no mischief. It may be that some pages are torn. That is in keeping with the acts of the accused themselves as will be apparent presently.

60. One torn page of the diary of July/August, 1981 exhibit-125 shows interalia the telephone number specifically given by P.W.23 as the new number on which to call from 5th August, 1992 (para 12 of the evidence of

P.W.23). It also contains similar instructions as in the ransom note found in the train, complete with the name of the train (Kutch Express) and various seat numbers being written and cancelled. It also shows coach number S-6 as well as No.5 written and cancelled. It shows the name of yet another train (Sav Janta Express) and on its reverse the name and telephone number of hotel Aradhana where P.W.23 and her husband P.W.25 were directed to stay as Mr. & Mrs. Dutt. The reverse of the chit shows 7 specific demands not contained in the final ransom note kept in the train ( and presumably imparted on the telephone).

61. This note shows the mind behind the mode. It shows the actual preparation of the crime which culminated on 9th August, 1992. The writing of various seat numbers which have been cancelled as also the coach numbers and the name of another train shows that the writer of the note had considered and conceived of earlier venues for leaving the ransom note to make his demand. For some reason the said coach numbers as also the train earlier determined did not fructify. This explains how and why so many phone calls through the days were made and received by P.W.23 and 25 before the final act on 9th August, 1992. The reverse of the note shows the earlier demands required by the accused, but which later culminated into the stencilled note showing the

precise exercise to be undertaken for the final act. This diary page sent as questioned document 17 to the handwriting expert has been opined to be of the handwriting of the accused no.1. ( The diary from which this page is torn by the accused is shown to be recovered from the flat from where the dead body of the victim child was recovered).

62. The other page of the diary exhibit-124 interalia bears reference to both the aforesaid phone numbers, the instructions to be given presumably on telephone to the persons named therein being Arvind Dutt (the assumed name of P.W.25 in the style of the accused) as well as the seat and coach numbers and departure timings of 2 trains mentioned in the earlier diary page. That document marked questioned document 17-A has been opined to be in the handwriting of accused no.1. (The diary from which this note is also torn by the accused is shown to be recovered from the flat from where the dead body of the victim child was recovered).

63. The search showed up 2 requisitions for railway reservation for 6th August, 1992 in Sav-Janta Express and for 9th August, 1992 in Kutch Express made in the names of Shah's and Mulchandani's respectively. The requisition slips marked questioned document 16 containing all the detailed

particulars of the proposed passengers by these 2 trains are opined to be in the handwriting of accused no.1.

64. The co-relation between the 2 notes exhibit-124 and 125 and the railway requisition slips exhibit-123; show efforts for reservation made twice over in 2 trains- the earlier being Sav-Janta Express and the later being Kutch Express by accused no.1, the master mind behind the plot. He tried to obtain reservation in specified coaches and for specified seats initially in Sav-Janta Express on 6th August, 1992, but which not having materialised, obtained in Kutch Express on 9th August, 1992. This explains how various coach numbers and seat numbers have come to be written and cancelled in pencil in the 2 diary pages exhibits 124 and 125.

65. The railway requisition slips therefore, show that the first requisition slip for Sav-Janta Express of 6th August, 1992 did not yield the tickets which were requisitioned, whereas the second requisition slip of Kutch Express for 9th August, 1992 resulted in issue of the reserved tickets in coach No.S-6 at seat Nos.26 and 27. The 2nd requisition slip shows the corresponding ticket No.317654 as is written by the Railway staff. These reserved seats are the specific ones mentioned in the final ransom note below which the rexine bag containing the note of instructions, was to be

retrieved by P.W.25.

66. It further explains the evidence of P.W.23 and 25 asking how they were directed to live in hotel Aradhana but nothing materialised and they had to return home without instructions and without their nephew.

67. These aforesaid documents assume greater importance upon seeing a page of the railway time table exhibit-145 torn from the bound time-table booklet, showing interalia the time table for Kutch Express recovered in the search panchanama from the accused (the entire time-table booklet is shown to be recovered from the flat where the dead body of the victim child lay buried).

68. A further find Exhibit -147 is railway identity card No.07084 alongwith Exhibit-146, the monthly second class railway pass no.46974 issued on 14th July, 1992 in the name of one Kailash Gokhale showing the photograph of accused no.2 stuck on the identity card with part stamp of Western Railway issued at Churchgate station. This railway pass is issued on a day after the incident for one month upto 13th August, 1992.

69. Exhibit- 150 is the railway identity card no.070848

alongwith exhibit-149, the monthly second class pass no.46975 also issued on 14th July, 1992 in the name of one Amar Modi showing the photograph of accused no.1 stuck on the identity card with part of the stamp of Western railway issued at Churchgate Station. This railway pass is also issued a day after the incident for one month upto 13th August, 1992.

70. Interestingly, together with these passes two old first class return railway tickets also came to be seized from them. A railway ticket no.18750 Exhibit-148 is for Rs.46/- which is from Malad to Churchgate issued in July, 1992. The other railway ticket no.18751 exhibit-151 for Rs.46/- is also issued from Malad to Churchgate showing that it was issued in July, 1992.

71. The serial numbers of the ticket, the railway pass and the identity card show that they were purchased together. The identity card and the railway pass specifically show that they were purchased on 14th July, 1992, a day after the incident. The accused having been arrested on 10th August, 1992 they have used the pass for the entire length of period between the date of incident and their arrest. The railway ticket must therefore, necessarily be for the period prior to 14th July, 1992. They were residing in Vandana Apartments

and were seen by the lift-man and the maid there. Though they obviously traveled in the suburbs of Bombay it is not known what mode of transport they used. The tickets from Malad to Churchgate are of the first class, issued in July, 1992, recovered from them during their search upon their arrest together with the railway pass leads one to conclude that these tickets were issued only on 13th July, 1992, the date of the incident (though the embossed date as used to appear on railway tickets during that period, is not discernible). It must be appreciated that after the kidnap of the child and when they absconded with the child they required to and did travel by the first class as is reflected in the ticket. The next day they took a monthly pass of second class. The ticket is for Rs.46/- each and the monthly pass is for Rs.84/- each. The photographs of the victim child exhibit-30; show the child in a cruelly folded position. How could he have been carried by them will be made clear when we consider the recoveries made from the flat where the dead body of the child was recovered which includes a large, 4 wheeler, double handled khaki colour carry bag.

72. The documents obtained upon the search of the accused show their criminal minds and thoughtful planning. They show how they were partners in crime, contributing distinct capital – accused no.1 the planning and organising ability for making ransom demands and accused no.2 the

technical know-how of diamonds which were the subject matter of the ransom. Both were required to move together and knowing such requirements they took initially 2 first class tickets and later 2 second class railway passes to give them the mobility they required and desired.

73. Each of these documents have been shown to the accused while recording their statement under Section 313 of the Cr.P.C. The accused have simplicitor denied that any of the aforesaid documents were collected from them under any search. With regard to the photographs on the railway identity card however, they contend that their photographs have been pasted on the identity cards of other persons. Indeed their photographs do not show the railway stamp part of which are impressed upon the identity cards. It can therefore, be accepted that their photographs were stuck on the railway identity cards and railway passes found on their person. Nevertheless the modus-operandi of their working together and the date of the issue of the railway passes and the identity card fits in perfectly with their placement on and immediately after the incident as shown in the prosecution case.

**The stencilled ransom demand notes**

74. In keeping with their elitist togetherness in contributing to the crime they proposed to commit upon the victim child, the 2 stencilled ransom demand notes must be specifically considered. The first demand note given on 13th July, 1992 and found by P.W.19 the grandmother of the victim child from the 3rd floor of their building shows the specific demand of 15 crores in high quality diamonds and 5 Kg gold in 1 Kg gold bars. It gives the contact place and telephone number which is of hotel Sahil as well as the date of contact 5 days thereafter i.e. 19th July, 1992. It further gives a specific command that if police is called the boy would be found dead on the beach. The note shows not only the specification of the articles demanded but the reason for such a demand. 15 crores worth of high quality diamonds would be far easier to carry than 15 crores of currency notes. 5 Kgs of 1 Kg gold bars would meet the same purpose instead of its monitory worth. The reasonableness of the demand was that the family of Mr. Shah was given a breather of 5 days to collect and to procure the demanded material. The specification of the venue shows the detailed planning that went into that decision-making. The last ultimatum given was in keeping with the undesired consequences which were expected.

75. The second ransom note which was found under seat nos.26 and 27 of compartment S-6 in Kutch Express on 9th

August, 1992 is far more detailed and runs into 5 pages. It shows the directions to be followed which are serially numbered. It cautions about the watch that they kept on every move of P.W.25, who was to obtain the note. It requires him to remove the walkie-talkie, place the ransom in the bag gold first and then diamonds on top. It requires him to lock and chain the bag. It then directs that as soon as the train leaves Bombay Central station he should switch-on the walkie-talkie to its fullest, put on the head-phones and leave it on until the train reaches Anand Station. It further directs that when a bell/beep sound is heard within 5 seconds he is to put all equipments and the note itself in the bag and gently throw the bag from the right hand side of the train between the tracks and not on the tracks. Then it directs that he should gently throw the bag as shown in the diagram annexed to the note to avoid damage to the diamonds. It cautions that if 4 events mentioned therein occur, the boy would never see his brother again. Those 4 events are :-

(i) Any tricks – empty bag, low grade or less amount than demanded.

(ii) If police attempts to stop the train, slow it down or jump from it

(iii) If there are any unscheduled stops.

(iv) If any tracer equipments found in the bag/contents.

It further assures that if the above instructions are followed he would see his boy.

1. The annexure to this note is the diagram of the train with the tracks showing the right hand side with an arrow followed by 2 diagrams of how to throw the bag; one right and one wrong. It further shows an important notice that he had to stand at the right hand side door of the train with walkie-talkie and the “maal” at all times until delivery.

2. The note reflects the methodical exactitude for the execution of the demand coupled with the fear of the consequences and the threats of such consequences. The note also shows the knowledge of high quality diamonds as may have been obtained from the diamond identification booklet exhibit-126. The offence of demanding such ransom is made by no ordinary criminal.

**Stay in Hotels in Mumbai after the incident**

78. It would now be material to see how the accused lived during the period between the date of the incident of kidnapping the victim child on 13th July, 1992 and their ultimate arrest on 10th August, 1992.

79. The evidence produced by the prosecution shows that they lived in various hotels. The prosecution has produced at least 2 registers showing the accused living in 2 hotels in Kandivali between 16th July, 1992 and 20th July, 1992.

80. The hotel register of one Glamour Guest House at Kandivali (W) has been produced by P.W.30 for the period from July, 1992 in evidence. It was recovered under a panchanama. Entry no.573 in the register shows one R. Kumar having checked-in into that hotel on 17th July, 1992. The entry shows 2 persons staying in room no.207. The address shown by said Mr. R. Kumar is of Ahmedabad. India. They lived there from 16th July, 1992 to 17th July, 1992. The entry marked exhibit-54 in evidence has been sent to the handwriting expert as document E-1 and has been opined to be in the handwriting of the accused no.1. Having checked-out on 17th July, 1992 the accused are stated to have again checked-in in the same hotel under entry no.599 in room no.207 where they lived until 18th July,

1992. The entry shows the same particulars. P.W.30 has identified both the accused in Court.

81. After having checked-out on 18th July, 1992 the accused are stated to have checked-into Hotel Nalanda, Kandivali (E), Bombay on 18th July 1992. P.W.28 has produced the register of hotel Nalanda and identified the accused as the persons having checked-in the names of P.and A. Sharma. Entry no.204 in the register of Nalanda Hotel, exhibit-51 shows 2 persons having checked-in the said hotel on 18th July, 1992 for a period of 3 days till 20th July, 1992. They have shown that they are in business having arrived from New Delhi and have given the address of Flat No.30, Lalitkung, Ambedkar Road, New Delhi. That entry marked as F-1 has been sent to the handwritng expert and has been opined as having been written in the handwriting of the accused no.2 and signed by accused nos.1 and 2 separately.

82. The hotel entries are seen to be made in the normal course of conduct of their business. No entry appears to be interpreted in between other entries.

83. This evidence completely rebuts the accused's case that they were arrested on 15th and 16th July, 1992 and that

they are falsely implicated, which case shall be considered presently.

84. In fact, these registers show 2 separate and distinct aspects :-

(i) The accused, though admittedly having their residence at Flat No.30, Damodar Bhavan, Near Vile Parle Railway Station, Bombay, did not continue to live therein upon their arrival in Bombay and specifically after the date of the incident. The accused instead lived in different hotels on different dates under different assumed names to conceal their identity and evade their expected arrest.

(ii) In the first of such instances when the accused needed to live in a hotel in Ahmedabad, they gave the name of accused no.1 in whose name the room was reserved in hotel Deluxe. So earlier into their holiday, they may not have at the same criminal intent that they developed as their stay in India progressed. Hence, they found the need for staying in hotels under assumed names. However, the one entry in the name of the accused no.1 and unmistakably in his handwriting and initialed by him is a pointer to the same act done more

discretely and prudently as they got into the thick of the crime.

85. It is contended by the accused no.1 that entries in the registers of Nalanda and Glamour Hotels Exhibits 51 and 54 respectively have been tampered with by the I.O by putting letters “R” and “M” suggesting that the handwritings were written by those accused in those entries. A careful examination of the entries belies this contention. The circling of the entries is in a red pilot pen. Various compartments in the entry are made by markings in a maroon ball pen. Letters “M” and “R” in one entry and “M” in another entry are in a third shade of red made by yet another ball pen. No tampering or interpretation is made by the I.O while circling the entry. The handwriting expert himself is free to mark the entries as per his opinion. It is consistent with his opinion. Even a comparison of the handwriting, which the Court may do under the provisions of S.73 of the Indian Evidence Act, shows the same likeness of the handwritings of accused nos.1 and 2. The mere mention of letters “M” and “R” does not matter at all.

86. In fact, we would do well to minutely examine the other documents sent to the handwriting expert in this light. The letter Exhibit 14, the Leave and License Agreement

exhibit-15, the affidavit Exhibit-17 and the letter Exhibit-22, the diaries Exhibits 137 and 138, similarly have the circled material and the number of the questioned document in different shades of red ball pens.

**Licence of flat at Kandivli (W) Mumbai**

87. It is the prosecution case that after the arrest of the accused and during their interrogation, the accused led them to a small flat in Mumbai, in Mathadi Worker's colony, Sahyadri Nagar, Charkop, Kandivli (W) Mumbai, which they had licenced, to show the dead body of the victim child. The said flat is room no. 3 in building no. 9 in the said colony.

88. PW 15 has deposed about the licensing of the flat in Mathadi Workers' colony, Kandivli on a deposit of Rs.15,000/- by the accused and monthly licencee fee of Rs.800/- and PW 27 is the estate agent who worked out the transaction. The Agreement, Exhibit 33 has been entered into by the accused in the name of Rakesh Shah with one Sudesh Vithal Kadam for flat No.3 in Building No.9,Sahyadri Nagar at Charkop, Kandivli (W) on 15th July 1992, two days after the kidnapping of the child. Surprisingly, though the stamp paper of the Leave and Licence Agreement is of 22nd June, 1992 purchased by one Advocate E.P.Parkar from

Sayhadri Nagar, Charkop, Kandivli (W) where the premises was, the accused despite their usual ingenuity, failed to put the date prior to the date of the incident thereon. The document is, dated 15th July, 1992 and remains at that. The evidence of the brother of the licensor mentioned in the document PW 15, who is a mathadi worker, shows description of the flat and the execution of the document,. The signature and initials on this document marked as "questioned document no.4" are opined to be in the handwriting of the accused no.2. The case of the accused with regard to this document is also of denial simplicitor.

**Recoveries from the flat at Kandivli (W) Mumbai**

89. Upon reaching Kandivli residence, the police recovered not only a dead body of the child but numerous other articles. The case of the accused is of simplicitor denial. The prosecution prepared a panchanama exhibit 76 dated 10th August, 1992 running into 13 pages. It would be pointless to reproduce each of the items recovered. It would be worthwhile to consider some of the important articles to throw light on the capacity of the accused to act as they did in the offence with which they are charged.

90. The panchanama inter alia shows various articles,

equipments,and building materials used by the accused to conceal the dead body of the child under a kitchen platform (otla) including a smooth white powder, stainer, cement, bricks, mutia (wooden articles for plastering wall) thapi, patia (as construction equipments) sand, cement, and galvanised bucket. The police had to break upon the brick wall constructed to extricate the body of the child from behind the wall. The panchanama also shows a box of insecticide found from amongst these material that would be useful in case of decay of the body. Further panchanama shows hardware implements including screw driver, hammer etc which would be used in construction.

91. There is a reference to two pips (drums) in the flat. These, in the ordinary course, would be required to store water. A reference is made in the panchanama to a khaki coloured, 4-wheeler, carry-bag containing two adjustable handles on two sides with a khakhi zip admeasuring 34" x 24" which was shown to have been immersed in water. This is an important find. It may be mentioned that the victim child as shown in the photographs Exhibit-30, had inter alia his limbs tied up. A small child of 8 years so tied up could be bundled in a carry bag. The accused, who then lived in Flat No.702 in Vandana Apts, had to reckon with the child who had been kidnapped after he returned from school with

his friend. The medical report shows administration of chloroform. The photographs Exhibit-30 show the mouth of the child tied up. Such a child had to be transported out of the building before the ransom demands would be made. The child was last seen only at 2.30 p,.m. on 13th July, 1992. The carry bag of the description aforesaid would be indispensible in the transport of the child. The railway ticket of first class issued in July 1992 would be required for carrying the child to Kandivli. These are return tickets between Malad and Churchgate. Two tickets had been purchased with consecutive numbers. Both the accused had to share the baggage containing the child taken in a carry bag. The specific carry bag of the above description was the very article required to carry such luggage. It is not known whether the child was still alive while he was being carried. The bag is expected to be stained and to exude the odour of the dead body of the child. This explains how bag was found immersed in water in a drum. It therefore, explains how there were two drums found in that flat. (In fact, these drums have served a dual purpose – aside from immersing the bag in the drum filled with water their usefulness to immerse the body of the victim child was also served as will be demonstrated presently).

92. Several articles recovered from the flat have been

serially noted in a panchanama Exhibit-76. Some of the other articles include string/rope/gloves which could be used at the time of concealment of the dead body of the child.

93. One hand-set of the walkie talkie set has been found from this flat along with with its cover. (the other was under the seat in Kutch Express bearing seat no. 26/27 which was to be used by PW 25 to communicate with the accused during the train journey.).

94. A stencil marked A to Z, 1 to 9 and O was also found from the Kandivli flat. That stencil is broken. However that was not the stencil used in the ransom note. It is a smaller sized stencil, presumably used for the draft ransom note and substituted by a larger size for the final notes.

95. Another intriguing find is 3 suburban railway time tables. It is interesting to note that one page of a Railway time-table torn therefrom inter alia relating to the Kutch Express was found from the person of the accused upon their arrest.

96. The most valuable find are the two diaries- one with a blue cover and another with a red cover. The diary with the

blue cover consisting inter alia names and addresses of certain persons and various other handwritten material. It may at once be mentioned that one page of this diary has been recovered under the search panchanama Exhibit-71. The diary of blue cover has been marked as Exhibit-137. The torn page of the diary recovered in the search panchanama is marked as Exhibit-124.

97. It would be material to note these two documents together. Exhibit-124 is a page out of Exhibit-137. The diary consists of several groups of pages bundled together by a string. One page of diary Exhibit 124 has been torn from the middle. The page Exhibit-124 shows an identical page earlier threaded with the diary. A small hole in the lower part of the page Exhibit-124 corresponds with a tiny piece of paper left untorn in the thread of the diary Exhibit-137. The horizontal lines in the two exhibits are identical as is the handwritten material. The page of the diary which has been torn is near a page where a scratch mark of a ball pen, which ran out of ink, is shown. Other pages also bear certain scratch marks denoting that the time when the page was torn, the ball pen ran out of ink.

98. It would also be material to consider the implications of some of the handwritten material in the diary in Exhibit-

137 recovered under the recovery panchanama Exhibit-76.

99. Various names and addresses of various parties marked questioned document was sent to the handwriting expert and opined to be that of the accused no.1. These names and addresses assume importance in view of the methodology of the crime. Certain telephone numbers and addresses of jewellers are found in this diary. The written statement of Accused no. 1 makes a reference to a sister Jagruti Dhakka, who was undertaking a medical course in England at that time. The two addresses of one Jagruti Dhakka are mentioned in the diary. These addresses are of England. Several pages of the diary are left blank after the addresses. These are followed by scratch marks of ball pen after which there are several blank pages. Thereafter is an intriguing list of western railway stations from Bombay Central to Ahmedabad, showing arrival and departure timings. This includes arrival and departure time at Anand. We may recapitulate that the stencilled note makes a specific reference to the directions to be followed until the train arrives at Anand. After yet several other blank pages is a list of certain articles including ".....covering cloth". One such cloth is seen in the three photographs of the victim child Exhibit 30 (colly). A later page **shows** in the same handwriting the position relating to certain telephone

numbers. It runs thus :

“ Phones started cut.

Radicals burnt junction box.

All lines out”.

**100**. Towards the end of the diary is, inter alia, the telephone number of PW 7, the family friend. The last two pages of the diary show names and telephone numbers of certain jewellers. The ransom, if successfully obtained, may merit a jeweller's assistance. The last cover page of the diary shows inter alia “ How to make a killing in penny shaves by Micheal Walters” and “ Penny shaved guide”.

**101.** Such handwritten material points to the intent and content of the ransom demand, the parties from whom they could have learnt a thing or two which would stand them in good stead for the perpetration of the crime and which shows the link to none other than the Accused. The acquaintance of the accused with several jewellers is consistent with the ransom note for crores of worth of specified jewellery. The list of western Railway stations shows the calculations of when the ransom could be thrown out of the earmarked train. The Railway time-table would be a good guide to determine the

arrival timings at these stations. The covering cloth is the one related to the photograph of the helpless victim. The name and telephone number of PW 7, the admitted family friend, shows the ownership of the diary. The address and telephone number of the sister who had medical expertise assumes importance in view of the more than a mere modicum of medical knowledge that the maintenance of the dead body of the victim child reveals as will be manifest presently.

**102.** The next article of panchanama is the diary of the year 1981 with red cover. That diary has been separately proved and marked Exhibit 138. One page of the said diary of July-August 1981 was found in the search and arrest panchanama Exhibit 71 marked as Exhibit 125. It will be prudent to consider these two documents together though the diary of 1981 is not as startling as the blue diary Exhibit 137.

**103**. The diary Exhibit 138 contains inter alia a handwritten biography of Mahatma Gandhi which is not seen to be in the handwriting of either of the accused as per the handwriting expert's opinion. It contains certain arithmetical problems relating to buying and selling price of certain articles marked questioned document 21 and opined to be in the handwriting of Accused no.2 and certain formulae of chemicals which are marked questioned documents No.21,

and are opined to be in the handwriting of the accused no.1. The last page of the diary Exhibit 138 is Exhibit 125 which has been dealt with hereinabove. It may only be stated that the page torn from the diary Exhibit 138 has been used by the accused after kidnapping the child and in aid of their ransom demands nearer 9th August, 1992 when they were working at obtaining a railway reservation, first in Sav Janta Express and later in Kutch Express, particulars of which are at the page marked Exhibit 125 found on their person. Reverse of the said page as aforesaid contained various instructions proposed to be given presumably on the walkie talkie.

**104**. A further reading of the panchanama shows the recovery of one book which is a diamond guide containing a stamp of Gemmological Institute of India. This also throws light upon the acumen of the gemmology of accused no. 2 whose handwriting was found at page 2 of the Diamond Identification Book Exhibit 126.

**105**. Two Indian passports of both the accused marked Exhibits 79 and 80 also recovered under the said panchanama.

**106**. This is followed by the recovery of certain cash in Indian rupees as well as dirhams and three items of jewellery

being a chain and two rings. (which are admitted to belong to them).

**107.** The panchanama also shows recovery of Habib Bank credit card of accused no. 2, Abu Dhabi Commercial Bank credit card, one passbook of Habib Bank belonging to accused no. 2, passbook and cheque book of Abu Dhabi Commercial Bank containing 22 leaves, one air ticket of AIR Emirates and one colour photo.

**108**. One intriguing find from one bag is a boy's uniform with the words " Apsara "on the collar, a half pant bearing the word "Apsara" and one pair of canvas shoes of corona company. It may be mentioned that the diary page Exhibit 124 inter alia contains reference to one "shirt- Apsara" "shorts- Apsara" and "shoes- corona" which have been opined to be in the handwriting of the accused no.1.

**109**. The prosecution has examined several witnesses showing purchase of various articles for construction of the wall to conceal the dead body of the victim child. PW 11 has deposed about how the muthia (wooden article for plastering the wall) was purchased by the accused. PW 12 has deposed about the purchase of the thapa and patia (implements for construction of the wall) PW 16 has deposed about the

purchase of 24 bricks, sand and tiles used as building materials. PW 18 has shown the purchase of galvanised bucket by the accused. PW 22 has deposed about the purchase of one cement bag and four sand bags by the accused. (He is not cross-examined on recall). PW 32 has deposed about accused no.2 purchasing one drum at one time and another drum a little later, the articles 118 and 119 in evidence which assumes a lot of significance for use of immersed bag in which the victim child was carried after being tied up, administered chloroform and presumably after he was dead. Each of these witnesses have identified the accused who purchased the items from them.

**110**. The reply of the accused in their statement recorded under section 313 of Criminal Procedure Code as well as the written statement of the accused no.1 show their explanations with regard to inter alia the aforesaid articles. Whereas the reply of the accused no.1 is of pure denial except for valuable articles, reply of the accused no. 2 is that some of them were recovered from their residence at Damodar Bhavan, some were given by their mother to the police,(she having being examined as DW1 who has deposed to that effect) and some having been purchased from the market.

**111**. One may concede that certain articles like mutia,

thapi, bricks, drums, sand, white powder, stainer, insecticide, carrybags, implements, rope,gloves etc used in the construction of the wall could have been purchased from the market. However, passports, foreign bank documents,air tickets, photograph may even have been left in their residence at Damodar Bhavan, Diaries unmistakenly belong to none other than the accused. One part of the walkie talkie, though bearing no particular reference to the accused, is important in as much as it shows the consistency with the evidence of PW 25 relating to the instructions in the train. Stencil though of smaller dimensions and not used in the final ransom note shows the attempts earlier rehearsals and at its user for the ransom note to conceal the handwriting of the accused. Similarly, a railway time-table along with one of its pages torn and the diaries alongside the distinct and distinguishable the torn pages show the link to none other than the accused. The reference to the lable “Apsara” which belonged to the victim child as it was on a boy's uniform, shorts and shoes also found on the diary page and seen in the handwriting of the accused unmistakenly point to none other than the accused and cannot have been articles kept in their flat at Damodar Bhavan. These are not the documents that could be purchased from the market either.

**112**. Hence, after the entire prosecution case was over, the

accused examined their mother.

**113.** It would be apposite to consider her evidence at this stage. It is her evidence that after having read in the newspapers about the arrest of her two sons, she came to India on Sunday 16th August, 1992. She went to her residence at Damodar Bhavan, Vile Parle, Bombay. She was taken to Juhu police station where the accused were kept in police custody. She met them. She was interrogated by the police. The police wanted to see certain documents and other papers from her possession . She told the police to send someone to her residence so that she could send the documents. One Police Officer and 2/3 constables went to her residence. She took out certain documents which were in English and hence not understood by her. She told the police officer to take the documents which they wanted. The police collected the documents from two racks of a Godrej cupboard and also took certain articles from the wooden cupboard as also ornaments, clothes, and shaving articles saying that it would be for the use of her sons. The police took away the articles filled in 5/6 bags filed with articles. These included the passports, air tickets, bank cards etc. From the said evidence, the accused desired to show that the drawing up of the panchanama was a mere farce and that the documents were seized from the residence to connect them to the crime, though they were

totally unrelated thereto. The handwriting of the accused in two diaries give a complete lie to the said explanation. The incriminating handwriting has been left unexplained. This handwriting is identical to the first such handwritten document Exhibit 129, in the name of Accused no.1 himself. The later documents reflect the modus of living and the effort in working up the crime. These documents lead us to no other conclusion than the guilt of the accused.

**114**. In fact these documents can explain the real role played by the accused in the phase of the crime after the victim child was kidnapped, tied, and taken out of Vandana Apts, He had to be dealt with. The medical evidence shows administration of chloroform, and smothering of the child. The dead body had to be disposed of. The accused are shown to have taken on licence a small flat in a Mathadi colony, not commensurate with their station in life but useful for the purpose of mere concealment of the most crucial evidence in this case.

**115**. It is seen that after kidnapping the child and the initial ransom note, which yielded nothing, the accused required to conceal the body. They therefore took the premises on licence 2 days thereafter. They had a 4-wheeler twin-handled bag which was found immersed in a drum filled with water. The usage of such immersion, though appearing far-

fetched, is reflected from the medical evidence.

**Medical evidence**

**116**. The dead body of the victim child having been recovered was sent for post mortem examination. PW 50, the Medical Officer at Coroner's Court, J.J.Hospital compound, Mumbai, who carried out the post mortem along with Dr.V.H.Kelvekar, has deposed that the face of the child had evidence of compression The lips, nostrils and eyelids could be identified. Their compression caused asphyxia of lungs leading to atelictic changes in the body. He has also deposed about the flabby mass of lungs due to smothering of the child intoxicated by the chloroform. His deposition as an expert medical opinion shows that smothering in a case of intoxicated child is sufficient to cause death in the ordinary course of nature. He has deposed that the results depend upon the quantity and concentration of chloroform used and in this case, it was an overdose. His cross-examination shows that in case of smothering of the child, there would be resistance from the person but that there may or may not be marks of resistance on the face or the body. In this case, he has not seen any bruises of violence on the body. He has deposed about the reaction on the body in case of inhailing of any poison. His deposition shows that the reaction depends upon

the concentration of the poison inhaled. He has deposed about the five stages of after-effects of inhalation of chloroform, analgesis, excitement,anesthesia, paralysis and death. He could not depose about the percentage of chloroform used by the victim in this case. He has produced the post mortem report which was marked Exhibit 112.

**117**. Clause 11 of the post mortem report relating to rigor mortis shows adipocere formed. Clause 16 shows both the legs bent at the knee and the upper extremities by the side of the trunk. His evidence read along with the said post mortem notes show final cause of death due to smothering in case of chloroform intoxication (poisons).

**118**. One aspect worth mentioning is the specific reference to adipocere formation on the entire body of the victim child.

**119.** The Adipocere (Saponification) is a modification of putrefaction (decomposition). It would be well worth understanding how the entire body of the victim child developed adipocere. Dr.K.S.Narayan Reddy's 'Medical Jurisprudence and Toxicology,' 1st edition, 2000 in Chapter 10 at page 158 explains the concept of adipocere. The fatty tissues of the body change into a substance known as adipocere. It is seen most commonly in bodies immersed in

water or in damp, warm environment. It is pertinent to remember that the accused no.2 had purchased 2 drums at a distance of 2, 3 days from PW 37. The bag containing 2 handles and 4 wheels was found immersed in one of the drums. The accused have worked upon their prey by obtaining scientific knowledge – their sister was a science student who had undergone a medical course in the U.K. Both the accused themselves are well read and well informed. The adipocere formation is therefore the result of a well thought of action and not without purpose. Adipocere shows the chemical reactions of hydrolysis or hydrogenation of pre existing facts and fatty acids in the body. The result of such hydrolysis is to inhibit putrefactive bacteria. The accused after having kidnapped the victim child had to act with a greatest expedition before the relatives of the child raise an alarm. The child who was last seen entering compound of the building by the neighbour PW 10 was taken up in the lift to their flat no.702. The accused were undoubtedly ready to swing into action. The child has been administered chloroform which is a product not available across the counter. That would have been the first requirement to prevent the child making any noise which may alert any neighbour or any other person in the building. That having been done, the child was tied up in the position shown in the in photographs Exhibit 30, 3 of which were put in the parcel containing his school bag and water bottle to be shown

to his grandmother with the first stencilled ransom note. The child had to be dealt with before things went awry. Hence, is the importance of the 4-wheeler, 2 handled bag in which the child could be carried by both the accused on 13th July 1992 (when the first class railway tickets could have been purchased). Soon the aforesaid effects of chloroform resulting in the 5th stage of death would occur and decomposition of the body would commence. The ransom demands yet had to be made. The accused could have calculated that this was a work of several days. The ransom had to be paid in 5 days. They therefore needed to inhibit any putrefaction. This was done by immersing the body in a drum filled with water to hasten adipocere by hydrolysis.

**120.** One of the properties of adipocere is stated to be distinct offensive or sweetish smell, which has been so stated in the PM report. The above authority further shows the time required for adipocere formation- 3 days in the climatic conditions of India to about 3 weeks in summer in temperate countries. The dead body of the victim child was recovered after about 3 weeks though the actual date of death is unknown . Consequently, the adipocere formation was found throughout his body.

**121.** The Book of 'Medical Jurisprudence and Toxicoloy' by

Mr.P.C.Dikshit, VIIth Edition, 2002 in Chapter relating to Post Mortem changes at page 294 shows that adipocere resists decomposition and retains the shape and appearance for many years though eventually adipocere itself degenerates. It can be seen that the identification of the features of the victim child were seen clearly in the PM report which was perhaps facilitated by adipocere. The above book further shows that gross adipocere occurs during immersion. This explains the need and the factum of obtaining 2 drums in the Kandivli flat by the accused no.2.

**122.** The effect of adipocere is clear identification. Hence the child was easily identifiable, despite compression of his face due to it being tied firmly.

**123.** What is important to note is that in the post mortem report the dead body of the victim had both the legs bent at the knee and upper limbs by the side of the trunk. This was exactly the pose of the child in three photographs Exhibit 30 (colly). It is therefore seen that the child was tied, tight with ropes so as to bend the entire body which cruel position remained until after his death. Such a bundle could be easily carried in a large wheeler bag with two handles by both the accused working in unison. The recovery of such a bag under a panchanama Exhibit 76 assumes even more credibility upon

seeing clause 16 of the post mortem notes.

**124.** The skull of the child was sent for super imposition test. PW 49 the Chemical Analyser, has deposed about the said test and produced the super imposition test report which confirmed the skull belonging to the victim child. However, that does not assume much importance in view of the fact that homicidal death is not denied, though the accused denied that they had nothing to do with the death of the child. (Ofcourse accused no.1 has contended that the superimposition test of merely the skull is not enough !)

**Defence case**

**125.** For such clear and unmistakable evidence establishing the link to none other than the accused, the defence of the accused is rather slender. Despite their scrupulous planning of the crime to be committed and their wit in coming up with a contrived reply to the each of the aspects of oral evidence as well as documents produced by the prosecution put to them and despite their punctiliousness in taking care of each circumstance by examining their own witnesses, the ultimate case of the accused rests essentially on denial.

**126.** In a bid to throw mud upon an otherwise clear case, the accused have raised various oral contentions :

(A) The accused were not arrested on 10th August 1992, but accused no. 1 was arrested on 15th July 1992 and accused no.2 on 16th July, 1992. The argument is meant to defeat the entire investigation relating to the telephone calls traced at Kandivli between 13th July 1992 when the victim child was kidnapped till 10th August 1992 when the accused were arrested. This is done upon the nebulous evidence of PW 29 and PW 39.

The evidence of PW-29 who introduced the accused no. 1 to the Manager of the TamilNad Mercantile Bank from where he obtained 7 demand drafts shows that he saw the accused no,. 1 for the first time on 24th June, 1992. Thereafter, he saw him after 1½ months at the police station. That would be after about a week of August, 1992. His statement however, was recorded earlier. That was on 19th July, 1992. That was before he saw the accused. The punctuation in this part of the evidence being incorrect, the accused claims to have taken advantage of the fact that on 19th July, 1992 the accused no.1

was shown to the witness by the police which in turn shows that he was arrested before 19th July, 1992. The reading of the evidence is not only erroneous but mischievous. The evidence runs thus :

"Before 24/6/92 I did not see the accused. But I had seen him after 24/6/92 at once, after about one and half month at the police station. He was shown to me by police. At about 19/7/92 my st was recorded before I was shown the accd. My st. was recorded correctly by police, and it was read over to me by police officer Shri Buddha. I was called for identification of the accused. My st. was not recorded after identification. It is not correct to suggest that I was not called for identification of the accused. "

This evidence shows that he saw accused no.1 for the first time on 24th June, 1992. His statement was recorded on 19th July, 1992. Thereafter, he saw the accused after first week of August, 1992. His statement was recorded before he was shown the accused. These two dates are 19th July, 1992 and first week of August, 1992. This evidence does not show that the accused was in the police station on

19th July, 1992 or that he was shown to the witness on 19th July, 1992 denoting his arrest on 15th July, 1992.

PW 39 has deposed about the incident when the accused accompanied by PW 1 had come to his shop to be photographed. That was when he wore spectacles. He has further deposed that after a few days, Police Inspector sent for him. According to the deposition of PW 39, he was shown a photograph. He identified the person in the custody of the police. The accused were in the police station. They were veiled covering their faces. Their faces were shown to him. He identified the accused as the person whose photograph was taken in his shop. He has deposed that his first statement was recorded on 20th July, 1992 and his further statement on 14th August, 1992. In his cross-examination, he has deposed that " when he went to the police for the first time they were not veiled with covered faces. They were in burkha on second occasion when he went to the police station." He has thereafter clarified -" on 20th July 1992 I did not see the accused veiled with covered faces. " It is argued on behalf of the accused that his statement shows that on 20th July 1992 he saw and identified

the accused no,. 1 in the police station when he was not veiled. From this evidence, they contend that they were arrested well prior to 10th August, 1992 and specifically on 15th July 1992 and 16th July 1992 respectively.

The recording of the evidence is not consistent with this contention. What is sought to be confused is the difference between the two attendances of PW 29 and PW 39 in the police station. The first was when their respective statements were recorded. The the second were when the accused were identified by them in the TIP. Accordingly their faces were veiled and thereafter shown. The cross-examination has been with the aim to confuse the 2 attendances. However, despite that exercise the case of the accused that they were arrested as contended by them is not seen.

(B) The search panchanama Exhibit 71 prepared at the time of the arrest was by the panch whose credentials were not bonafide, he having one criminal case to his credit and he having been procured from the area of Juhu police station.

It is indeed correct that the panch is a responsible person obtained by the police from the locality where the panchanama is to be effected. That has been invariably done in this case also with several other panchas. However, on 10th August, 1992, especially after the incident of 9th August, 1992, the police are well within their rights to take with them several persons from their jurisdiction as they had specifically gone there for the purpose of arresting the accused whose telephone numbers were traced to be emanating from Kandivli Telephone Exchange.

(C) The accused, therefore, question how the seal came to be carried at the site of the panchanama. That alone is not determinative of the fact that the panchanama itself was not prepared.

(D) The key obtained by the police of the Kandivli flat was not shown sealed. The keys were obtained from the accused which was stated to have led the police to the flat where the dead body of the victim child was recovered. The technicality of sealing therefore, assumes secondary importance.

(E) The same panch was used for preparation of

the panchanamas Exhibits 76, 81 and 82 which was prepared and executed on 10th August, 1992, 12th August, 1992 and 24th August, 1992 respectively. What aspect is missed is that upon the parent panchanama Exhibit 76 being prepared which led to a plethora of discoveries and recoveries, further panchnamas Exhibit 81 and 82 had to be prepared as a form of continuation. It would be worthwhile noting that those panchnamas need not have been prepared had certain articles not been found to be wet and not recoverable on the date of the first panchanama Exhibit 76,. Two of the three important articles which were seen to be wet were khaki colour carry bag which has been of tremendous use to the accused as aforesaid and the blue petticoat in which the dead body of the child was seen to have been wrapped. It is in fact prudent to recover those articles already seen on an earlier occasion through the same panch.

(F) It took more than the required time to prepare that panchnama Exhibit 76. That panchnama runs into 13 pages which is a detailed enumeration of the minutest articles found in the flat licenced by the accused. 3 ½ hours for the completion of the legal

formalities is a job well done.

(G) The body took 9 ½ hours to find itself in the government morgue at Cooper Hospital. It arrived in the wee hours of the morning of 11th August, 1992. Accused no. 1 has set out the time taken usual motor vehicle to traverse the distance between the Kandivli flat and Cooper Hospital. The aspect that is ignored is that various articles enumerated in the panchnama Exhibit 76 had to be sealed and signed by the police officer as well as the panchas. All this takes time after which the police could go to the hospital. Hence the depositions of DW 3 and 4 at Cooper Hospital, who has been examined by the accused, yield nothing. Interestingly, it is pointed out in the written arguments of the accused no.1 that it took 3 days for the prosecution to open the sealed bags in the Court. One must therefore, understand the time taken for sealing them in the first place.

(H) In the documentation maintained by Cooper Hospital, which consists of 3 Registers, a page is missing, the xerox copy of which was given to the accused, and is got produced through DW 4. Secondary evidence is sought to be led through DW 4 to show

that the missing page was mischievous. It is not understood how before the page got to be missing, any employee serving in the morgue of Cooper Hospital could have profecised that it would be missing and had taken out its xerox copy. The xerox copy is not shown to be the correct copy of the original. It therefore, cannot be used as secondary evidence to prove the original page which is stated to be missing. In any event, the missing page does not matter. In fact the clandestine copy made by the government employee to pass it on to a private individual is an act of misconduct. It is the case of the accused that it was done for bonafide purpose by the government employee to extricate the accused from the police mess. Whatever that be, the xerox copy leads us nowhere.

(I)There are anomalies in the packing and sealing of the articles and the description of the articles. The fact remains that the articles were enumerated in the panchanama Exhibit 76 which took 3 ½ hours to prepare after which the recovered body of the child took another 91/2 hours to reach its ultimate destination. Several other articles were required to be unpacked and resealed for various purposes. The discrepancy if any, matters little. What is of

substance is to see the contents of the articles and how the accused could be linked to them if at all.

(J) The acquisition of room no. 3 in building no. 9 in Mathadi colony has not been clearly proved through the evidence of the two witnesses- the brother of the owner of the flat and the partner of the estate agent. It is contended that unless exclusive possession of the said flat is shown the recovery cannot be attributed to the accused. That contention is completely incorrect. The title of the accused to the flat is of no consequence. The only aspect to consider in a criminal trial such as this is where the body was found, how it was recovered and whether the recovery of the body and other corroborative material point to none other than the accused.

(K) It is not Rajesh as contended by the prosecution but Rakesh Shah who is shown to be the licencee of the agreement for the Kandivli flat in the agreement Exhibit 33. A reading of the agreement shows interpolation only in letter “J/K what is of essence is that it has an assumed name but a document is opined to be executed by accused no.2.

(L) The opinion of the handwriting expert Exhibit 139 is of December 1993. The accused lay much stress on the fact that he has deposed that after being summoned by the police on 10th October 1998 he called the photographer for enlargement of the copies of the documents. The evidence is a clear anomaly. The opinion recites that it has been carefully prepared with scientific equipment. The enlarged copies are part of the record and an anomaly in a date mentioned by the witness cannot discredit his entire effort and his evidence. In any event the scientific equipment are mere aids in decifering in writing. The document had been sent by the police to the hand writing expert in the latter part of 1993. There is no reason for the handwriting expert to call for the photographer as late as in October 1998. Reference to that date is without bonafides.

(M) Much ado is made about the usage of the words “Mumbai “ and “Bombay” in the reasons and the opinion Exhibit 139, respectively. The reasons for the opinion shows reference to C.R.No. 277 of 1992, Mumbai instead of “Bombay”. Though the handwriting expert has agreed in cross-examination that in 1992, Bombay was not called Mumbai, there is no evidence that on 17th December, 1993 the date of the

opinion Exhibit 139 the city was not called Mumbai.

(N) The C.A report and the post mortem report do not deserve to be relied upon and do not point to ultimate murder of the child by the accused by smothering upon an overdose of chloroform because no poison was noticed in the viscera of the child. The act of suffocation could not result in an outcome which was predictable and therefore taken to be the cause of the death of the child. Since the mouth was compressed, the body was not identifiable, neglecting the chemical effect of adipocere which makes the body more identifiable. In this case since adipocere had been formed on almost the entire body, the features of the face could also be identifiable and comparable with the photograph of the child, the compression of the mouth due to it having being tied firmly nothwithstanding.

**127.** Accused no. 1 has tendered his hand written statement in the trial court. It deserves a look,

**Written Statement of Accused no.1**

(a) They were born in Dubai after having migrated

there. They had their education in English. They are not very well versed in their mother tongue as well as national language. Even before us, accused no.1 chose to address only in English. The handwritten material in the diary pages show their easy conversance with the language. Consequently, the ransom note though addressed to a Gujrathi family is in chaste English, in consonance with their educational background. They are shown to be in easy financial circumstances. Their father earned 1,00,000/- dirhams with free housing water, electricity, petrol provided by the U.A.E. Government. They owned three vehicles and an audio cassette business.

(b) His elder sister Jagruti Dhaka and younger brother Rajesh Dhakka are shown to have grown up in Dubai. The sister was taking education in New Castle University in U.K. and serving as an Opthalmologist at Kent Country Hospital U.K. ( 2 of her addresses are mentioned in the diary Exhibit 137). Accused no.1 is a computer programmer. He was in car business. Accused no. 2 was admitted to the London School of Economics in U.K. an undergraduate. He was to attend the university in September, 1992. The accused no. 1 was to acquire distributorship rights for Hindi films in the

Middle Eastern Region (stark cases of waste talent).

(c) A conflict is shown between the parents of the accused. This was because of certain financial assistance given by his father which their mother objected. The accused therefore decided to leave Dubai ..... " May be the task of finding us would calm tempers." (This is to explain away their absence without informing their parents in Dubai).

(d) He has referred to the Power of Attorney executed by him in favour of his Manager to continue his business in his absence. The power of Attorney is not produced or annexed to his written statement. The accused went to their flat at Vile Parle, Mumbai. They received messages from their parents and "consciously avoided making any reply." (This is to explain the circumstances about the visit of the family friend PW 7 for being found scarce in Dubai by their parents).

(e) The accused are stated to have gone to Rajasthan between June 92 and the second week of July 1992. The case is almost of an alibi in an effort to show their absence from Mumbai during the time of the

transaction for licencing flat no,.702 in Vandana Apartments. (However, the evidence had displayed that this is not true- the first entry in a hotel being Hotel Delux at Ahmedabad is of 13th May 1992. The period of holiday from June 1992 is purposely shown in a bid to avoid the incriminating entry Exhibit 129. The period of holiday ending in the second week of July is to exclude themselves from the entire transaction of Vandana Apartments culminating in the kidnapping of the victim child. The entire case of the purported alibi is not shown supported by any document).

(f) On 15th July1992 the accused no., 1 is stated to have been arrested at Vile Parle Railway station. He informed the police about his brother who was also arrested from their residence. (It is not understood how when both the brothers left Dubai and went on their holiday to Rajashtan together and have been always as seen to be together, they were not found together on 15th July 1992 when accused no. 1 alone was allegedly arrested. It is also not understood why he would inform the police about his brother so that the brother came to be arrested allegedly the next day).

(g) He has alleged torture at the hands of the police. He has relied upon the photographs that were in print media. The written statement shows how photographs that appeared in the print media did not raise questions about the blood stained torn clothes, the fact that they were haggard and signs of torture on their body. (The news report marked Exhibit D-20 shows two brothers looking haggered, but does not show any blood stains or torn clothes or any signs of torture).

(h) Consequent upon the press publicity, a press conference having been held on 10th August, 1992 their mother learnt of their arrest and arrived in Bombay though "she did not like the mentality of the Indian people." ( A letter sent by his mother's Advocate to the owner of flat no. 702 Vandana Apartments, Exhibit A states that she gave instructions in June 1992 for return of deposit amount paid for it showing her presence in India from June 1992).

(i) On 24th August, 1992 accused no. 1 learnt that police had visited their residence and his mother had given personal articles such as passports, bank

passbooks to the police. (The accused have accordingly sought to explain away the incriminating documents recovered under the search and recovery panchanama in Exhibit 71and 76)

(j) Their photographs and finger prints were taken (This is how the accused has sought to explain the photograph on the affidavit Exhibit 17).

(k) The accused no.1 has denied even the specimen handwriting and consequently denied that any of these handwriting attributed to him as belonging to him. (In fact the handwriting expert's opinion is very balanced. It has attributed to the accused only certain of the documents as having been written by them which alone are considered as evidence against the accused various documents are left as one which could not be opined to be of the accused are accordingly left from the evidence by us as well as the learned trial Judge).

(l)It is their case that they are new to India they having been born and settled in Dubai and have no one in India to look up to and since the police could not find the culprit of the kidnapping of the child they made the accused scapegoats. (In such a scenario, the accused are not expected to know the working of Indian Criminal Justice system.

Nevertheless further written statement of accused no.1 shows that the panchas and witnesses have links with the police. Some have criminal records (PW 40 and 42) in Tada case and under Essential Commodity Act, respectively). Some conduct illegal business and reside in the jurisdiction of Juhu police station. Some have fear of police since their livelihood depends upon obliging the police while others were emotionally blackmailed. Accused no.1 has sought to allege that each of the 53 witnesses have deposed falsely. It is isoteric how the accused who were brought up and who lived almost throughout their life in Dubai understood and deposed about the axiom of the criminal system in India except upon tutoring.

**128. What is conspicuous by its absence is any worthy defence to the acquisition of the flat in Vandana Apartments by the accused. It is gratifying to note that the written statement of accused no. 1 shows the evidence relating to the acquisition of Vandana Apartments flat as "overwhelming". It is contended by the accused no.1 that merely taking of the possession of the flat means nothing because unfortunately the boy was kidnapped from the building where he took possession soon thereafter.**

**Similarly entries in the hotel registers which directly point to the modus operandi of the accused are left untouched more specifically the entry in the register of Hotel Deluxe which is in the name of the accused no.1 himself, the only defence being "random entries" in Hotel Register are pointed out by the prosecution as having been made by the two brothers.**

**Consideration of the prosecution case vis a vis the defense**

**129.** It would be apposite to consider the evidence in the light of such a defence that each of the witnesses have been got up to frame the accused for the offences with which they are not even remotely concerned.

**130.** Not only the oral evidence of witnesses such as the liftman, PW 3, the neighbour PW 10, or the maid servant of the adjoining flat PW 26 which inspires confidence but the entire oral evidence of as many as 14 witnesses and the evidence of the court witnesses which shows the complete chain of events for the procuration of flat no. 702 in Vandana Apartments would have to be discarded if that was so. Why would the police go through the intriguing details? If they had to falsely implicate the accused they could have shown the accused residing in flat no. 702 itself and got them arrested. And there is no explanation for the receipt of Rs.1,00,000/- in the

Magistrate's court by Ram Sahy (Manish).

**131.** Similarly the evidence of several panchas PW 30,31,35,36,37,40,42 and 44, and the articles which were brought from the market may be discarded upon the written statement of the accused but how can one ignore intrinsic parallels in the diary pages and the crime scene or the connection of the accused with their sister to obtain medical knowledge or the connection of the accused with several jewellers which would be needed for the ransom for jewellery ?

**132.** Similarly if the entries in the Hotel Register of Hotel Glamour and Nalanda in the name of others be taken as manufactured by the prosecution the accused has not explained at all the entry in the register of Deluxe Hotel at Ahmedabad Exhibit 129 in the name of the accused no.1 himself though all the documents have been put to the accused as having been given to the handwriting expert for opinion and found to contain their handwriting.

**133.** The accused have been charged with putting the relatives of the victim child in fear of death of the victim child and thereby committing extortion on various dates on which the phone calls were received by them. A reading of the evidence as a whole shows various phone calls received by the

relatives more specifically PW 23 and 25. They were for directing them to follow instructions for dispatch of the demanded ransom. The phone calls received up to 9th August, 1992 have been traced to have been made from Kandivli Telephone Exchange. Certain phone calls stated to have been made on 10th August, 1992 at the time of the arrest of the accused have been omitted in the investigation record. The police have entered into correspondence with the MTNL authorities to trace the calls. However, the calls assume secondary importance in view of the fact that the ransom never came to be paid, but thanks to those calls, the accused came to be arrested from the telephone booth at Kandivli Telephone Exchange. The charge of making extortion on various dates need not be separately considered in view of the fact that the child who was kidnapped was ultimately murdered and his dead body came to be buried in a Kandivli flat from where it was recovered at the instance of the accused.

**134.** The case of the accused no.2 is that several aspects are brought out by the prosecution with which he is not concerned. He contends that the prosecution has “mixed up” the respective cases of the accused. This argument runs contrary to the law of common intention and acts of conspiracy under sections 34 and 120 (B) of IPC with which also the accused are charged. It is seen how both have performed their

separate parts in perfect harmony and they have shared the burden almost equally and that the entire crime came to be perpetuated through their joint efforts. It is also seen that at least two witnesses PW 3 and PW 26 have seen the accused together. In fact therefore the contention raised by accused no. 1 are considered even with regard to accused no.2 and he would get equal benefit from them if they hold water.

**135.** The authorities and citations relied upon by the accused, with which we fully agree, take their case no further and need not been enumerated.

**136.** The entire evidence seen together establishes the prosecution case against the accused beyond reasonable doubt.

## Arguments on the Sentence

**137.** It is argued as the last straw by the accused that they have already served 14 years in prison. They contend that this case despite the death of the victim child does not fall under the mischief of section 300 of IPC. The accused argued that the mouth of the child is not shown to be gagged and a handkerchief from which chloroform could have been administered is not produced. Only the mouth of the child

was tied to prevent the boy from raising alarm which inadvertently resulted in his death. Consequently, they contend that this case falls within the mischief of section 304 part II of IPC alone. It shocks our conscience as to how after a concerted effort of the accused spanning weeks the death of the child can be taken to have resulted inadvertently. We find the strongest intention imputable upon both the accused who have well conceived and executed their plan and treated the child so completely with horrendity that it could result in nothing but his death. The case of the accused therefore falls squarely within section 300 of the IPC punishable under section 302 of IPC.

**138.** The accused contend that the imprisonment in default of fine is not awarded in the judgment. The judgment has detailed a separate and distinct sentence for distinct offences committed by the accused and imposed a distinct amounts of fine for each of these distinct offences. In fact, we are satisfied that the imposition of fine is after much profound thought. The judgment also sets out the directions in case of payment of fine and the directions in case of non- payment of fine. We find no reason to interfere with any of them at all.

**O R D E R**

**139.** The appeals of both the accused are therefore, dismissed. Some of the articles have already been destroyed and have not been brought before us. The documents produced before us shall not be destroyed until the period of appeal to the Supreme Court is over.

**140.** The documents Exhibit 124, being page of the diary with blue cover and Exhibit 137, the diary itself of blue cover, from which page Exhibit 124 is seen to be torn, shall be kept

in a sealed cover by the Sheristedar of this Court.

**141.** The Registrar General, High Court, Bombay is directed to send a copy of the Judgment and Order to the Appellants through the Superintendent of Prison where the Appellants are undergoing sentence.

**(SMT. ROSHAN DALVI, J.)** **(SHRI. J.N. PATEL, J.)**